



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

Washington, D.C. 20570

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3093

March 2, 2007

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The Earthgrains Co., a wholly owned subsidiary of Sara Lee Bakery Group, Inc. (25-CA-29803; 349 NLRB No. 34) Owensboro, KY Feb. 22, 2007. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish to the Union requested relevant information for four months. However, the Board found it unnecessary to pass on the judge's apparent finding that the Respondent was obligated to return and furnish documents that were created after Oct. 11, 2005, the date of the information request. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Schaumber, and Kirsanow participated.)

Charge filed by Teamsters Local 215; complaint alleged violation of Section 8(a)(5) and (1). Hearing at Owensboro, May 16, 2006. Adm. Law Judge Paul Buxbaum issued his decision July 28, 2006.

Midwest Television, Inc., d/b/a KFMB Stations (21-CA-34683, et al., 1-CA-35029-2; 349 NLRB No. 38) San Diego, CA Feb. 20, 2007. This case concerns unfair labor practice allegations arising from abortive negotiations between the Respondent and the Union for a successor collective-bargaining agreement in 2001. The majority opinion by Members Schaumber and Kirsanow reverses the administrative law judge's finding that the Respondent's withdrawal of recognition from the Union -- after a majority of employees signed a decertification petition -- violated the Act. "[T]he Respondent withdrew recognition based on an untainted showing of majority disaffection from the Union," the majority stated. [\[HTML\]](#) [\[PDF\]](#)

The majority found no violation in the Respondent's unilateral reduction of Rick Moorten's wages to union scale, citing the Board's decision in *KFMB Stations*, 343 NLRB 748 (2004) (*KFMB I*). It reasoned that "Moorten's above-scale wage rate resulted from direct dealing and, as such, was a permissive bargaining subject."

The majority also reversed the judge's finding that the Respondent's proposal to eliminate union security in the new collective-bargaining agreement constituted bad-faith bargaining because it was based on a valid reason, namely, "it wanted to eliminate the union-security clause because it did not want to be forced to remove on-the-air talent for nonpayment of union dues."

Dissenting Member Walsh argued that the Respondent unlawfully withdrew recognition based on his dissenting view in *KFMB I* and in the instant case that the Respondent committed pre-decertification petition unfair labor practices (the Respondent unilaterally changing Moorten's established wage rate and issuing a memorandum to employees on Sept. 19, 2001, blaming the Union for Moorten's wage reduction). Member Walsh would find that this unlawful conduct tainted the decertification petition and thus the Respondent's withdrawal of recognition also violated the Act.

The Board adopted the judge's findings that the Respondent violated the Act by telling employee Mike Effenberger that he was being discharged because station manager Ed Trimble

was “eliminating bargaining units”; by offering the services of its attorney, Craig Schloss, to employees who had been subpoenaed during the Board investigation; and by coercively interrogating, through Schloss, employee Brian Wilson. The Board ordered the Respondent to reinstate Effenberger and to make him whole for any loss of pay or benefits resulting from his discharge.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Television Artists (AFTRA) San Diego Local; complaint alleged violation of Sections 8(a)(1)(3) and (5). Hearing at San Diego, on various dates from Mar. 31 to May 1, 2003. Adm. Law Judge James L. Rose issued his decision Feb. 25, 2004.

Nichols & Wright Paving, Inc. (9-CA-41612, 41729; 349 NLRB No. 39) Huntington, WV Feb. 23, 2007. The Board affirmed the administrative law judge’s findings that the Respondent violated Section 8(a)(1) and (5) of the Act when it terminated its collective-bargaining agreements with the Laborers and the Operating Engineers and withdrew recognition. The Board ordered the Respondent to reinstate the contracts and to make whole employees by any loss of wages or benefits they may have suffered. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Operating Engineers Local 132, Laborers District Council/Charleston, WV, and Laborers Local 543; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Huntington, Aug. 31, 2006. Adm. Law Judge Martin J. Linsky issued his decision Nov. 9, 2006.

Service Employees International Union Local 87 (Able Building Maintenance Co.) (20-CB-12510; 349 NLRB No. 40) San Francisco, CA Feb. 23, 2007. Agreeing with the administrative law judge, the Board dismissed the complaint against the Union alleging it had asked the employer to discharge employee Carlos Serrano for a reason other than Serrano’s failure to tender uniformly required initiation fees and periodic dues. The complaint alleged that the Respondent caused the discharge of Serrano pursuant to an internal union bylaw which prohibits members from working for more than one company covered by the collective-bargaining agreement between San Francisco Maintenance Contractors Association (SFMCA) and the Respondent and/or from working simultaneously at two jobs in the same industry covered by the SFMCA contract. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Kirsanow and Walsh participated.)

Charge filed by Carlos Serrano, an Individual; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). Hearing at San Francisco, June 14 and July 20, 2006. Adm. Law Judge Mary Miller Cracraft issued her decision Nov. 16, 2006.

St. Vincent Medical Center, a Division of Catholic Healthcare West, Southern California (31-CA-24325; 349 NLRB No. 36) Los Angeles, CA Feb. 16, 2007. In a Supplemental Decision and Order, the Board accepted the remand of the U.S. Court of Appeals for the Ninth Circuit as the law of the case in concluding the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily subcontracting the work of the 27 employees in the respiratory care (RC) department and by discharging those employees because they participated in union activity. The court rejected the Respondent's business justification and concluded that "the true motive for the subcontracting decision was anti-union animus." [\[HTML\]](#) [\[PDF\]](#)

In its initial decision, 338 NLRB 888, issued on March 31, 2003, the Board affirmed the administrative law judge's decision that the Respondent had not violated the Act because the General Counsel had not established that anti-union animus was not a motivating factor in the Respondent's decision to subcontract out the work of the RC department; and the Respondent failed to demonstrate that the same action would have taken place even in the absence of the protected conduct.

In reversing the Board's earlier decision, the court concluded that the General Counsel met his *Wright Line* burden: "(1) the General Counsel presented un rebutted evidence concerning St. Vincent's knowledge of union activity, (2) the timing of St. Vincent's decision to subcontract raised a compelling inference of anti-union animus, (3) the ALJ mistakenly relied on post-subcontracting evidence to establish the cause of the subcontracting decision, and (4) St. Vincent's business justification was unreliable, therefore raising the inference that its justification was merely a pretext for anti-union animus.

The court rejected the Board's reliance on the Respondent's implementation of its subcontracting decision "within the 30 to 60 day timeframe it announced prior to the filing of the petition for a representation election."

(Chairman Battista and Members Schaumber and Walsh participated.)

UMass Memorial Medical Center (1-RC-22044; 349 NLRB No. 35) Worcester, MA Feb. 20, 2007. The majority, Members Liebman and Walsh, ruled that the Regional Director properly directed a self-determination election among the Employer's per diem EMTs, notwithstanding that the Petitioner and Employer had executed a collective-bargaining agreement that had excluded per diem EMTs from the unit of regular EMTs. [\[HTML\]](#) [\[PDF\]](#)

Dissenting Member Schaumber would "hold the Petition to its contractual commitments" and dismiss the petition. He said "the exclusionary language in the contract bars a self-determination election among the per diem EMTs seeking to include them in the existing unit of regular EMTs."

The majority pointed out that the contract “does not contain a provision in which the Petitioner explicitly agrees not to seek to represent any employees who are excluded from the bargaining unit it currently represents.” The majority also noted that the Petitioner never requested recognition of the per diem employees in the course of the bargaining that resulted in the contract.

(Members Liebman, Schaumber and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

The Imperial Buffet & Restaurant, Inc. d/b/a Majestic Restaurant & Buffet (an Individual) Wayne, NJ Feb. 21, 2007. 22-CA-27468; JD(NY)-10-07, Judge Joel P. Biblowitz.

Stepan Co. (Electrical Workers UE Machine Tool & Die Local 155) Fieldsboro, NJ Feb. 21, 2007. 4-CA-34417; JD-10-07, Judge Wallace H. Nations.

New York One, LLC (an Individual) New York, NY Feb. 22, 2007. 2-CA-36987, 37788; JD(NY)-11-07, Judge Eleanor MacDonald.

Media General Operations, Inc. d/b/a The Tampa Tribune (an Individual) Tampa, FL Feb. 22, 2007. 12-CA-24770; JD(NY)-12-07, Judge Joel P. Biblowitz.

Jackson Hospital Corp. d/b/a Kentucky River Medical Center (Steelworkers and an Individual) Jackson, KY Feb. 22, 2007. 9-CA-37734, et al.; JD(ATL)-7-07, Judge Margaret G. Brakebusch.

RVL Contactors, Inc. (Mid-Atlantic Regional Council of Carpenters) Morgantown, WV Feb. 23, 2007. 6-CA-35033, et al.; JD-12-07, Judge Wallace H. Nations.

Barstow Community Hospital – Operated by Community Health Systems, Inc. (United Nurses Association of California, NUHHCE, AFSCME) Barstow, CA Feb. 23, 2007. 31-CA-26057; JD(SF)-07-07, Judge Lana H. Parke.

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel’s motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare Center (Steelworkers) (18-CA-16616-1; 349 NLRB No. 37) Hibbing, MN Feb. 16, 2007. [\[HTML\]](#) [\[PDF\]](#)

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to and
adopted Reports of Regional Directors or Hearing Officers)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Transportation Solutions, Inc., Pittsburgh, PA, 6-RC-12518, Feb. 20, 2007
(Members Schaumber, Kirsanow, and Walsh)

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Antelope Valley Recycling and Disposal, Palmdale, CA, 31-RC-8590, Feb. 22, 2007
(Members Schaumber, Kirsanow, and Walsh)

Lawrence Hospital Center, Bronxville, NY, 2-RC-23130, Feb. 23, 2007
(Members Schaumber, Kirsanow, and Walsh)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Upper Cumberland Electric Membership Corp., South Carthage, Cookeville, Gainesboro,
and Livingston, TN, 26-RC-8507, Feb. 22, 2007 (Members Schaumber,
Kirsanow, and Walsh)

Defoe Corp., New York, NY, 29-RC-11107, Feb. 23, 2007 (Members Schaumber,
Kirsanow, and Walsh)

**DECISION AND DIRECTION [that the Regional Director
Open and count ballots]**

Demicco Brothers, Inc., New York, NY, 29-RC-11109, Feb. 23, 2007
(Members Schaumber, Kirsanow, and Walsh)

Tri-Messine Construction Co., Inc., East Meadow, NY, 29-RC-11184, Feb. 23, 2007
(Members Schaumber, Kirsanow, and Walsh)

*(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

Shady Knoll Health Center, Seymour, CT, 34-RC-2200, Feb. 21, 2007
(Members Kirsanow and Walsh, and Member Schaumber dissenting)

Cardinal Health 200, Inc., Montgomery, NY, 2-RC-23170, Feb. 21, 2007
(Members Schaumber, Kirsanow, and Walsh)

Miscellaneous Decisions and Orders

**DECISION ON REVIEW [affirming the Regional Director's prior decision to dismiss the
petition] AND ORDER [remanding case to Regional Director
to consider impact of the parties' settlement]**

The New York and Presbyterian Hospital, Westchester Division, White Plains, NY,
2-RM-2098, Feb. 22, 2007 (Members Schaumber and Walsh, and Chairman
Battista dissenting)
